

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

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November 9, 2022

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Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 21-10-002:

This is the proposed decision of Administrative Law Judge Debbie Chiv. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 15, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:smt

Attachment

Decision **PROPOSED DECISION OF ALJ CHIV** (Mailed 11/9/2022)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to
Oversee the Resource Adequacy
Program, Consider Program
Refinements, and Establish Forward
Resource Adequacy Procurement
Obligations.

Rulemaking 21-10-002

**DECISION DENYING PETITION FOR MODIFICATION
OF DECISION 22-03-034 BY CALIFORNIA
COMMUNITY CHOICE ASSOCIATION****Summary**

This decision denies the petition for modification of Decision 22-03-034, filed by California Community Choice Association.

Rulemaking 21-10-002 remains open.

1. Background

The Commission established the hybrid central procurement (CPE) structure in Decision (D.) 20-06-002. In that decision, the Commission adopted a central procurement structure that allowed load-serving entities (LSEs) to voluntarily procure local resources to meet their system and/or flexible Resource Adequacy (RA) needs and count them towards the collective local RA requirements.¹ An LSE that procured a resource that met a local RA need had the option to: (1) self-show the resource to the CPE to reduce the CPE's overall

¹ D.20-06-002 at Ordering Paragraph (OP) 4.

local procurement obligation and retain the resource to meet the LSE's system or flexible RA needs, (2) bid the resource into the CPE's solicitation, or (3) elect not to show or bid the resource to the CPE and use the resource to meet the LSE's own system and flexible RA needs. The Commission also gave the CPE discretion to defer procurement of a local resource to the California Independent System Operator's (CAISO) backstop mechanisms, rather than through the solicitation process, if bid costs were deemed unreasonably high.²

The Commission issued D.22-03-034 on March 18, 2022. That decision adopted modifications to the CPE structure, including revisions to the requirements for self-shown local resources. Another key modification in D.22-03-034 was a revision to the CPE procurement timeline to give both LSEs and the CPEs a similar amount of time to complete necessary procurement after receiving final allocations.³ On September 30, 2022, California Community Choice Association (CalCCA) filed a petition for modification of D.22-03-034, and motion for shortened time to respond to the petition for modification. An Administrative Law Judge (ALJ) ruling, issued on October 4, 2022, granted the motion for shortened time, with modifications.

Responses to the petition were filed on October 11, 2022 by: Alliance for Retail Energy Markets and the Regents of the University of California (Joint Co-Filers), CAISO, Independent Energy Producers Association (IEP), Pacific Gas and Electric Company (PG&E), Shell Energy North America (US), L.P. (Shell), Southern California Edison Company (SCE), and Western Power Trading Forum (WPTF).

² *Id.* at OP 26.

³ D.22-03-034 at 33.

1.1. Summary of Petition

In its petition, CalCCA states that the CPE's procurement plays a pivotal role in an LSE's system and flexible RA procurement because an LSE's RA requirements are met by a combination of direct procurement and credit allocations made by the Commission.⁴ CalCCA asserts that "[i]n very rough numbers, for the PG&E area, these allocations approximate five percent of an LSE's total requirement, although the precise percentage may vary by LSE."⁵ CalCCA argues that "[c]onsequently, an LSE in the PG&E area has virtual certainty that it must directly procure between 16 and 49 percent of its total requirement, but the remaining procurement is surrounded by a range of uncertainty."⁶ CalCCA states that the uncertainty for the 2023 RA compliance year has been compounded by the PG&E CPE's inability to procure its local requirements for 2023.

CalCCA states that in D.22-03-034, the Commission recognized the challenges of the PG&E CPE's 2023 local deficiencies and suspended deficiency assessments until January 1, 2023 to give LSEs additional months to procure system RA after the CPE completes local procurement. CalCCA argues that this is only a partial solution, as the PG&E CPE again failed to meet its 2023 local RA requirements, with shortfalls ranging from 1,050 MW to 4,485 MW.

CalCCA adds that CAISO's assessment of whether to backstop a local deficiency adds more uncertainty to LSEs' system procurement because if CAISO determines there is a local deficiency, it will procure additional resources with the possibility that associated system RA will be allocated to LSEs. CalCCA

⁴ CalCCA Petition for Modification (Petition) at 3-4.

⁵ Petition at 4.

⁶ *Id.*

states that the timing of CAISO's potential backstop procurement may occur after the year-ahead compliance deadline, or after the month-ahead RA process. CalCCA argues that LSEs may attempt to meet their full year-ahead system and flexible requirements without accounting for CAISO's potential backstop but that doing so risks over-procurement. If an LSE elects not to procure in anticipation of CAISO's potential backstop, that LSE may face penalties if it fails to meet its requirements.

CalCCA petitions the Commission to take the following actions in the PG&E service territory:

- Immediately "suspend" a portion of an LSE's annual system and flexible RA compliance requirement until after CAISO has performed local RA backstop for the CPE;
- Immediately "suspend" a portion of an LSE's January, February, and March monthly system and flexible RA compliance requirements until after the CAISO has performed local RA backstop for the CPE;
- Assess deficiency penalties for the unsuspended portion of the annual system RA requirement no earlier than January 1, 2023, as D.22-03-034 currently provides;
- Once CAISO completes its backstop, but not later than January 15, 2023, update annual system and flexible RA requirements for the remainder of the year accounting for system and flexible allocations resulting from backstop; and
- Require LSEs to meet the "suspended" portion of their annual and monthly system RA, as adjusted following backstop procurement, not later than May 1, 2023.

CalCCA further requests that for all service territories, an interim process should be established for an LSE to seek a waiver of system and flexible RA penalties. Alternatively, CalCCA requests that the Commission modify the

system RA procurement timeline and resolve the penalty waiver issue using any other processes at its disposal.

1.2. Summary of Party Comments

Joint Co-Filers and Shell generally support the petition and echo the concerns outlined by CalCCA.⁷ Joint Co-Filers oppose changes to the month-ahead deadlines and propose modifications to the petition's revised compliance timeline. Joint Co-Filers support limiting obligations when there are known supply deficiencies but do not support a system waiver process.

Several parties oppose the petition, including CAISO, IEP, PG&E, SCE, and WPTF. PG&E and SCE assert that the petition is procedurally deficient because it fails to present new or changed facts to support a modification of a Commission decision, and fails to be supported by a declaration of affidavit, as required by the Commission's Rules of Practice and Procedure (Rules) 16.4(b).⁸

PG&E, SCE, and WPTF state that the requested relief is not necessary before October 31, 2022 because D.22-03-034 already extends the deadline by directing Energy Division to not send deficiencies notices to LSEs until January 1.⁹ PG&E and SCE state that the requested relief could not be granted before October 31 anyway due to the procedural requirements for a proposed decision addressing the petition for modification.

IEP, PG&E, SCE, and WPTF oppose adopting system RA penalty waivers.¹⁰ These parties state that the Commission previously rejected system

⁷ Shell Comments to Petition at 2, Joint Co-Filers Comments to Petition at 3.

⁸ PG&E Comments to Petition at 4, SCE Comments to Petition at 2.

⁹ PG&E Comments to Petition at 7, SCE Comments to Petition at 3, WPTF Comments to Petition at 4.

¹⁰ IEP Comments to Petition at 6, PG&E Comments to Petition at 3, SCE Comments to Petition at 3, WPTF Comments to Petition at 3.

RA waivers because there are “significant, unresolved issues” to be considered and the petition does not resolve those issues.¹¹ These parties state that system penalties are necessary to incentivize LSEs to fulfill their responsibility to serve load. PG&E and SCE argue that the California Energy Commission’s stack analysis contradicts CalCCA’s stack analysis, and IEP states that CalCCA’s analysis does not include the final net qualifying capacity resources. PG&E states it conducted its own analysis and that, after accounting for new resources expected to come online, the system market for 2023 is not deficient but has a surplus of 702 MW for September 2023.

CAISO, SCE, and PG&E express concerns that suspending LSEs’ RA requirements would designate CAISO as the “front stop” to meet LSE procurement needs, when the RA program should serve as the front stop.¹² CAISO states that CalCCA incorrectly assumes that CAISO allocates flexible RA credits to LSEs for local Capacity Procurement Mechanism (CPM) designations, whereas flexible RA credits are only allocated pursuant to flexible capacity CPMs, not other types of CPM procurement. CAISO adds that suspending LSEs’ requirements until after CPM designations does not waive CAISO’s tariff requirements to review year-ahead showings based on up-front RA requirements. Thus, suspending obligations may have unintended consequences of triggering additional CPM designations for system and flexible RA, beyond those needed to address the CPE’s local deficiencies.

PG&E, SCE, and WPTF states that CalCCA should raise its concerns in the next phase of the Implementation Track, where parties will have an opportunity

¹¹ See D.20-06-031 at 65.

¹² CAISO Comments to Petition at 2, SCE Comments to Petition at 5, PG&E Comments to Petition at 11.

to submit proposals in January 2023. CAISO and WPTF recommend additional transparency regarding CPE solicitation, participation, and procurement to help LSEs understand local capacity that is not shown or not offered to the CPE.

2. Standard of Review

Public Utilities (Pub. Util.) Code Section 1708 gives the Commission authority to “rescind, alter, or amend any order or decision made by it.” Modifying an existing decision, however, is an extraordinary remedy that must be carefully applied to keep with the principles of res judicata since “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”¹³

The Commission has consistently held that a petition for modification is not a substitute for legal issues that may be raised in an Application for Rehearing.¹⁴ The Commission “will not consider issues which are simply re-litigation of issues that were decided in [the original decision].”¹⁵ However, as permitted under Rule 16.4, allegations of new or changed facts may be raised in a petition for modification if properly supported by the appropriate declaration or affidavit. A petition for modification must be filed within one year of the effective date of the decision proposed to be modified, and if past one year, the petition must explain why the petition could not have been presented within one year of the decision.¹⁶

¹³ 1980 Cal. PUC LEXIS 785, 24; *see also* 2015 Cal. PUC LEXIS 278, 7.

¹⁴ *See* 2011 Cal. PUC LEXIS 483, 4.

¹⁵ *Id.*

¹⁶ Rule 16.4(d) of the Commission’s Rules of Practice and Procedure.

3. Discussion

3.1. Petition Fails to Meet the Requirements of Rule 16.4

Pursuant to Rule 16.4(b), any factual allegations must be supported with specific citations to the record or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

CalCCA's petition does not include a supporting declaration or affidavit, nor does it include specific citations to the record in this proceeding or matters that may be officially noticed, as required by Rule 16.4(b). It is therefore unclear whether the petition seeks to assert new or changed facts since the issuance of D.22-03-034. The Commission concludes that the petition fails to assert new or changed facts to warrant the requested modifications to a Commission decision, as required by Rule 16.4(b).

3.2. Petition Provides Insufficient Basis to Warrant Modifications to D.22-03-034

The Commission concludes that the concerns raised in the petition with respect to the PG&E CPE's local RA procurement shortfalls for the 2023 RA year were already addressed in D.22-03-034. In D.22-03-034, the Commission considered modifications to the CPE's procurement timeline and stated that it "must balance the need for LSEs to have sufficient time to incorporate the CPE's procurement actions into their system and flexible RA portfolio planning, with the need for the CPEs to have adequate time to complete an effective all-source solicitation that accounts for self-shown resources and the procurement review process required by D.20-06-002."¹⁷

¹⁷ D.22-03-034 at 33.

The Commission stated that:

Weighing the benefits and concerns raised for each proposal, the Commission finds that PG&E's proposal strikes a reasonable balance between the competing needs of LSEs and the CPEs in that it gives both LSEs and the CPEs a similar amount of time (6-8 weeks) to complete necessary procurement after receiving allocations.

The Commission specifically acknowledged concerns raised about the PG&E CPE's procurement shortfalls for the 2023 RA year. To address these concerns, LSEs were given flexibility to procure to meet their year-ahead obligations:

Given the procurement shortfalls in the PG&E TAC area for the 2023 RA compliance year, we find it reasonable to give LSEs in the PG&E TAC area additional flexibility in securing their year-ahead system and flexible RA portfolios. As such, for 2023 year-ahead RA compliance only, Energy Division will not send deficiency notices to LSEs serving load in the PG&E TAC area earlier than January 1 following the year-ahead showing deadline.

By providing that Energy Division will not send deficiency notices to LSEs for year-ahead RA obligations until after January 1, 2023, LSEs are effectively given two additional months for procurement for the 2023 RA year only. The Commission, however, expects LSEs to continue to meet their full year-ahead obligations by the October 31 deadline. For the 2023 RA year only, LSEs can use the additional months to continue to procure to meet any remaining short positions before Energy Division issues deficiency notices.

As such, the Commission finds insufficient basis to warrant modification of D.22-03-034 and accordingly, CalCCA's petition is denied. We clarify that in any RA compliance year, should CAISO perform local RA backstop for the CPE after the year-ahead compliance deadline, Energy Division will account for the

associated system and flexible RA credits in developing year-ahead deficiency notices.

Lastly, the Commission agrees with parties that additional transparency regarding the CPE's participation and procurement process would be useful to help LSEs understand the local RA capacity that is not shown or not offered to the CPE. In the next phase of the Implementation Track, we encourage parties to submit such proposals that provide additional transparency on the CPE procurement efforts.

4. Comments on Proposed Decision

The proposed decision of ALJ Debbie Chiv in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Debbie Chiv and Shannon O'Rourke are the assigned ALJs in this proceeding.

Finding of Fact

1. Rule 16.4(b) requires that any allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

Conclusions of Law

1. The petition for modification failed to satisfy the requirements of Rule 16.4(b).
2. The petition for modification failed to provide sufficient basis to warrant a modification of D.22-03-034.
3. The petition should be denied.

O R D E R

IT IS ORDERED that:

1. California Community Choice Association's petition for modification of Decision 22-03-034 is denied.
2. Rulemaking 21-10-002 remains open.

This order is effective today.

Dated _____, at San Francisco, California.